

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ANGELO LENA,
Plaintiff,

v.

SAN QUENTIN STATE PRISON, et al.,
Defendants.

Case No. [14-cv-02498-JD](#)

ORDER OF DISMISSAL

Re: Dkt. Nos. 11, 15

Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and plaintiff has filed an amended complaint.

DISCUSSION

I. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a

1 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above
 2 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
 3 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its
 4 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”
 5 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they
 6 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
 7 should assume their veracity and then determine whether they plausibly give rise to an entitlement
 8 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by
 10 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was
 11 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

12 **II. LEGAL CLAIMS**

13 Plaintiff states that his legal materials have been confiscated by prison officials.
 14 Allegations of destruction or confiscation of legal documents may state a claim for denial of
 15 access to the courts. *See Morello v. James*, 810 F.2d 344, 346-348 (2d Cir. 1987). The state is
 16 constitutionally required to provide affirmative assistance to pro se litigants, *see Bounds v. Smith*,
 17 430 U.S. 817, 828 (1977), and cannot satisfy this obligation by providing a prisoner access to the
 18 legal resources necessary to prepare his case and then deprive him of his work product, *see*
 19 *Morello v. James*, 810 F.2d at 346-48. A plaintiff must allege an “actual injury” to court access,
 20 however, which consists of a specific “instance in which an inmate was actually denied access to
 21 the courts.” *Sands v. Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989). Only if an actual injury is
 22 alleged does a plaintiff state a claim for which relief can be granted. *See id.*; *see, e.g., Jenkins v.*
 23 *McMickens*, 618 F. Supp. 1472, 1474-75 (S.D.N.Y. 1985) (complaint alleging certain documents
 24 pertaining to pending trial confiscated and not returned to conclusory to support claim of denial of
 25 access to court).

26 Plaintiff has submitted a 128 page amended complaint that names as defendants several
 27 prison officials, prosecutors, appointed defense attorneys at trial and on appeal, superior court
 28 judges and a judge of the California Court of Appeal. He alleges that the defendants were engaged

1 in a vast conspiracy to illegally convict him in Marin County after he was extradited from Canada
2 following an illegally obtained conviction in that country. He states that defendants confiscated
3 23 boxes of his legal materials that contained his appeal and trial evidence regarding his Marin
4 County and Canadian convictions. The original complaint was dismissed with leave to amend so
5 plaintiff could describe how he was denied access to the courts and what legal injury he suffered.
6 Plaintiff has failed to cure these deficiencies in his amended complaint.


7 Plaintiff presents many conclusory allegations that the boxes of legal materials that were
8 taken contained important evidence that he was framed in Canada and in Marin County. These
9 allegations are insufficient under *Iqbal*. Simply stating that he has evidence showing that jurors
10 and the judge were biased, or that DNA evidence was falsified, without credibly describing the
11 evidence, is not enough. That the trial judge denied many of his motions does not support his
12 allegations of bias and a conspiracy. Moreover, plaintiff spends a great deal of time describing his
13 illegal Canadian conviction and the evidence pertaining to that case, but it is not clear how that
14 relates to his Marin County conviction. Plaintiff's allegations fail to state a claim because he has
15 not sufficiently described a denial of access to the courts that resulted in an actual injury due to the
16 confiscation of his legal materials.

17 CONCLUSION

- 18 1. The complaint is **DISMISSED** with prejudice for failure to state a claim.
- 19 2. Plaintiff's motions (Docket Nos. 11, 15) are **DENIED**.
- 20 3. The Clerk shall close this case.

21 **IT IS SO ORDERED.**

22 Dated: December 2, 2014

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24 _____
25 JAMES DONATO
26 United States District Judge
27
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/2/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael Angelo Lena ID: AN9205
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127

Dated: 12/2/2014

Richard W. Wieking
Clerk, United States District Court

By: Lisa R. Clark
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO